

FILED

OCT 24 2005

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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12 Attorneys for the Plaintiff
13 ELAINE L. CHAO, Secretary of Labor
14 UNITED STATES DEPARTMENT OF LABOR

15 UNITED STATES DISTRICT COURT
16
17 NORTHERN DISTRICT OF CALIFORNIA
18
19 SAN FRANCISCO DIVISION

20 ELAINE L. CHAO, Secretary of Labor,) Civil Case No. C04-4949 PJH
21 UNITED STATES DEPARTMENT OF LABOR,)
22) **AMENDED STIPULATION**
23 Plaintiff,) **FOR ENTRY OF**
24) **PROTECTIVE**
25 v.) **ORDER FOR DISCLOSURE**
26) **OF DOCUMENTS IN**
27 LAWRENCE J. MAZZOLA, et al.,) **RESPONSE TO DISCOVERY**
28) **REQUESTS [AND**
) **~~PROPOSED~~ ORDER]**
)
)

29 WHEREAS, in the course of discovery in this case, the parties may wish to
30 disclose documents and information which the disclosing party contends constitute or
31 contain privileged information ("Privileged Information"); and

32 WHEREAS, in the course of discovery in this case, the parties may wish to
33 disclose documents and information which the disclosing party contends constitute or
34 contain confidential and proprietary information; including, but not limited to, "trade

1 secrets and commercial or financial information obtained from a person and privileged or
2 confidential" under 5 U.S.C. § 552(b)(4) ("Confidential Information"); and

3 WHEREAS, the parties intend that, in the interest of full disclosure and in order to
4 further this litigation without unnecessary motion practice, disclosure of Privileged
5 Information or Confidential Information should not be treated as a waiver of any legal
6 right or privilege for all purposes or for other information that the disclosing party may
7 consider privileged or confidential. Privileged Information and Confidential Information
8 are hereinafter referred to as the "Protected Information";

9 The parties hereto, by and through their counsel of record, hereby stipulate,
10 pending approval of the Court, to the entry of a Protective Order (hereinafter referred to as
11 the "Protective Order") on the following terms:

12 1. The parties may designate documents or information as Protected
13 Information by sending a letter to counsel of record to the party seeking the information.
14 The letter shall identify the Protected Information with reasonable particularity, such as by
15 Bates-stamped numbers or by title and page numbers.

16 2. All Protected Information, whether contained or referred to in documents,
17 deposition testimony, answers to interrogatories, written responses, answers to requests for
18 admissions, affidavits, or declarations, or in copies, extracts, and summaries (complete or
19 partial) prepared from such documents, or in copies of any of the foregoing, shall be
20 subject to the Protective Order and shall not be divulged, disclosed, or used under any
21 circumstances except as provided by the Protective Order.

22 3. Any deposition testimony in this litigation, or any portion thereof,
23 concerning Protected Information may be itself designated as Protected Information by
24 counsel for the parties. Such designation may be made in writing or orally to all counsel.
25 Such designation may be made prior to the deposition, at the time of the deposition, or
26 within 20 days after receipt of the deposition transcript(s) by counsel.

27 4. Protected Information, including any deposition testimony designated as
28 such, shall be used solely for purposes of this litigation; shall not be published to the

1 general public in any form and shall not be used for any other legal or business purpose, or
 2 in connection with any other litigation, and may be disclosed only to the following
 3 persons:

- 4 a) the parties to this action;
- 5 b) counsel of record for the parties to this action and employees of
 6 such counsel who are assisting counsel in the preparation of this action for trial, but only
 7 to the extent said employees have a need to know the contents of the Protected
 8 Information;
- 9 c) independent experts or consultants, including employees thereof,
 10 retained by counsel of record employed for the purpose of assisting counsel of record in
 11 the preparation of this action for trial, but only to the extent such persons need such
 12 Protected Information for that preparation;
- 13 d) judicial officers and Court personnel (including stenographic
 14 reporters employed by the Court);
- 15 e) stenographic reporters not employed by the Court who are reporting
 16 deposition testimony in this action, and their employees and agents who are assisting them
 17 for that purpose; and
- 18 f) any other person under such terms as may be agreed upon by the
 19 parties in writing or as the Court may hereafter order.

20 5. Any person identified in Paragraphs 4(e) and (f) above shall not be given
 21 access to Protected Information unless and until he or she executes a written statement
 22 containing the following language or its substantive equivalent:
 23

24 I hereby acknowledge that I (name), (position of employment), am about to
 25 receive Protected Information supplied by (name of party). I understand
 26 that such information will be provided to me pursuant to a Protective Order
 27 in United States District Court Case No. 04-04949. I have read the
 28 Protective Order and agree to be bound by its terms. Protected Information
 as defined in that Order, as well as all copies, notes, and records of such
 Protected Information, shall not be used in any manner other than for
 purposes authorized under the Protective Order, and shall not be disclosed

1 to anyone other than as authorized under the Protective Order. I understand
2 that violation of the Protective Order may subject me to a citation for
3 contempt of court which may be punishable by fine and/or imprisonment.

4 6. Counsel receiving Protected Information shall not make more copies of
5 such Protected Information than counsel deems reasonably necessary for the prosecution
6 of this action. All copies of Protected Information shall be kept and stored in a manner
7 reasonably calculated to preserve confidentiality.

8 7. Protected Information, and papers and testimony referring to Protected
9 Information, shall not be filed with the Court except in connection with this case and only
10 as follows:

11 a) All submissions to the Court which incorporate or disclose
12 Protected Information shall be submitted to the Court pursuant to procedures governing
13 the filing of documents under seal as set forth in Civ. L. R. 79-5.

14 b) With regard to the Protected Information, the parties may, but are
15 not required to, file documents designated Privileged Information and/or Confidential
16 Information by that party under seal in the manner provided in subsection (a) above.

17 c) The court shall make appropriate orders to preserve the
18 confidentiality of Protected Information accepted for filing under seal during proceedings
19 in open Court and transcripts thereof.

20 d) The use of Protected Information in any Court proceedings in this
21 action shall not cause the information or document to lose its protected status under the
22 Protective Order.

23 8. The Protective Order shall be without prejudice to the right of the parties to
24 bring before the Court at any time the question of whether the use of any particular
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1 document or information should be restricted, or to move for a separate protective order as
2 to any particular document or information, including restrictions different from those as
3 specified herein.

4 9. Should any party wish to challenge the treatment of any information
5 deemed Protected Information under the Protective Order, said party may move the Court
6 by noticed motion for an order that such information does not constitute Protected
7 Information. Before filing such a noticed motion, the party shall make a reasonable
8 attempt to resolve the matter informally with counsel.
9

10 10. Nothing in the Protective Order nor the protection of any information or
11 document under the terms of the Protective Order, nor any proceedings pursuant to the
12 Protective Order, shall be deemed to have the effect of an admission or waiver by any
13 party or of altering the privileged nature or confidentiality or non-privileged nature or non-
14 confidentiality of any document or information. The fact that information is designated as
15 privileged or confidential under the Protective Order shall not determine or affect what a
16 trier of fact may find to be privileged, confidential or proprietary.
17

18 11. The Protective Order shall survive the final termination of this action and
19 the Court shall retain jurisdiction to resolve any dispute concerning the use of information
20 disclosed hereunder.
21

22 12. Upon termination of this case, by judgment, appeal, settlement, dismissal,
23 or otherwise, unless otherwise agreed to in writing, all Protected Information subject to the
24 Protective Order, including all copies thereof, shall be assembled and returned to counsel
25 of record for the party designating said Protected Information as such, or the destruction of
26 same shall be certified in writing by counsel for the party returning said Protected
27 Information.
28

13. No part of the restrictions imposed by the Protective Order may be

1 modified or terminated, except by a written stipulation executed by counsel of record for
2 the parties to this Protective Order, or by an Order of this Court.

3
4 IT IS SO STIPULATED.

5
6 DATED: October 20, 2005.

JONES DAY

7 By: /S/

JAMES P. BAKER

8
9 Attorneys for Defendants

10 Lawrence J. Mazzola; Lawrence Mazzola, Jr.;

11 William B. Fazande; Larry Lee; James R.

Shugrue; Vohon J. Kazarian; Tom Irvine; Robert

12 E. Buckley; Robert Buckley, Jr; Art Rud; Ron

Fahy; Robert Nurisso; Frank Sullivan; U.A.

13 Local 38 Pension Trust Fund; U.A. Local 38

Health & Welfare Trust Fund; U.A. Local 38

14 Apprentice & Journeyman Training Trust Fund;

U.A. Local 38 Scholarship Trust Fund; U.A.

15 Local 38 Vacation and Holiday Trust Fund; U.A.

16 Local 38 Convalescent Trust Fund and Richard

L. Milsner

17
18
19 DATED: October 19, 2005.

MANDELL LAW GROUP

20 By: /S/

Douglas D. Mandell

21
22 Attorneys for Defendants

23 Local 38, United Association of Plumbers,

24 Pipefitters & Journeymen International and Local

38 Lakeside Haven, Inc.

1 DATED: October 19, 2005.

SECRETARY OF LABOR

4 By: /S/ Wayne R. Berry

Wayne R. Berry, Senior Trial Attorney

Salvador Simao, Trial Attorney

Cathern Smith, Trial Attorney

Megan Guenther, Trial Attorney

Attorneys for Plaintiff

ELAINE L. CHAO, Secretary of Labor,

UNITED STATES DEPARTMENT OF LABOR

11
12 **CERTIFICATION OF SIGNATURES**

13 I hereby attest that I have on file all holograph signatures for any signatures
14 indicated by a "conformed" signature (/S/) within this efiled document.

15 DATED: October 20, 2005.

JONES DAY

17 By: /S/

JAMES P. BAKER

Attorneys for Defendants

Lawrence J. Mazzola; Lawrence Mazzola, Jr.;

William B. Fazande; Larry Lee; James R.

Shugrue; Vohon J. Kazarian; Tom Irvine; Robert

E. Buckley; Robert Buckley, Jr; Art Rud; Ron

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U.A. Local 38 Scholarship Trust Fund; U.A.

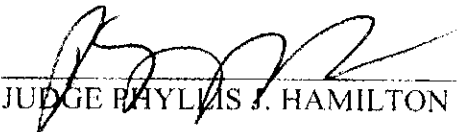
Local 38 Vacation and Holiday Trust Fund; U.A.

Local 38 Convalescent Trust Fund and Richard
L. Milsner

ORDER

IT IS SO ORDERED.

DATED: 10/24/05


JUDGE PHYLLIS J. HAMILTON